

## Chapter 68. Sexual and Other Harassment Policy

[HISTORY: Adopted by the Town Board of the Town of Smithtown 3-26-2002.<sup>[1]</sup> Amendments noted where applicable.]

### **GENERAL REFERENCES**

Code of Ethics — See Ch. 30.

[1] *Editor's Note: This resolution superseded former Ch. 68, Sexual Harassment Policy, adopted 5-10-1994.*

### § 68-1. Sexual harassment prohibited.

Sexual harassment in the workplace is illegal, and all employees and Town officials are forbidden from engaging in such activity in any manner. The Town of Smithtown (hereinafter the "Town") is committed to providing a work environment free from all forms of sexual harassment or intimidation.

### § 68-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

#### **PROHIBITED HARASSMENT**

- A. Any conduct can constitute prohibited harassment when:
  - (1) It is based on an individual's race, color, creed, ethnicity, disability, religion, national origin, age, marital status, citizenship, veteran status, sexual orientation, pregnancy, or any other category protected by law; and
  - (2) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.
- B. Examples of behavior that may constitute prohibited harassment include, but are not limited to, the following (when they are based on an individual's race, color, creed, ethnicity, disability, religion, national origin, age, marital status, citizenship, veteran status, sexual orientation, pregnancy, or any other category protected by law):
  - (1) Abusive language, including innuendoes, slurs, suggestive, derogatory or insulting comments or sounds, threats, and jokes based on an individual's protected status.
  - (2) Use of demeaning or offensive words.
  - (3) Abusive written language or pictures, transmitted via e-mail or otherwise, showing or displaying offensive objects or pictures, or graphic commentaries or gestures in the workplace.
  - (4) Any physical contact based on an individual's protected status.

## **SEXUAL HARASSMENT**

- A. Unwelcome sexual advances, requests or demands for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:
  - (1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
  - (2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting the individual, such as promotion, transfer, or termination; or
  - (3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.
- B. Examples of behavior that may constitute sexual harassment include, but are not limited to, the following:
  - (1) Explicit or implicit threats of retribution, or promises of benefits, in return for sexual favors.
  - (2) Abusive language related to an employee's sex or sexual preference, including sexual innuendoes, slurs, suggestive, derogatory or insulting comments or sounds, whistling, jokes of a sexual nature or concerning gender-specific traits, sexual propositions and threats.
  - (3) Use of demeaning or offensive words when referring to a particular sex or sexual preference.
  - (4) Requests or demands for sexual favors or sexually oriented comments about an employee's body or appearance, sexual habits, sexual preference, or sexual desirability.
  - (5) Unwelcome sexual advances.
  - (6) Unwelcome physical contact, including touching, petting, pinching, coerced sexual intercourse, assault or intentional brushing up against a person's body.
- C. Sexual harassment is not limited to oral comments. Abusive written language or pictures, transmitted via e-mail or otherwise, showing or displaying pornographic or sexually explicit objects or pictures, graphic commentaries or obscene gestures in the workplace, which unreasonably interfere with an employee's work performance or create an intimidating, hostile, or offensive working environment, are also prohibited.

### **§ 68-3. Other forms of unlawful harassment.**

Just as sexual harassment is strictly prohibited, so is harassment on the basis of race, color, creed, ethnicity, disability, religion, national origin, age, marital status, citizenship, veteran status, sexual orientation, pregnancy, or any other category protected by law. The Town is committed to providing a work environment free from all forms of unlawful harassment or intimidation.

### **§ 68-4. Procedure for complaints.**

- A. Any person who reasonably believes that he or she has been the victim of sexual or other unlawful harassment, or has witnessed such activity, must immediately report the incident to his/her department head. If you are uncomfortable speaking to your department head or if you believe your complaint has not been adequately addressed, you must speak to the Town Attorney, or the Town Personnel Officer.

[Amended 11-10-2009]

- B. All complaints will be investigated in a timely manner.
- C. Confidentiality will be maintained to the maximum extent possible, consistent with the Town's obligation to conduct a thorough investigation. All individuals who become involved in the investigation are required and directed to treat the matter confidentially.
- D. Investigation of a complaint will normally include conferring with the parties involved and any named or apparent witnesses. Should the Town determine it necessary to interview the employee alleged to be doing the harassment, where the employee is a member of a union recognized by the Town, the employee shall be notified of his/her right to be accompanied by a union representative at such interview. The particular facts of the allegation will be examined individually, with a focus upon the nature of the behavior, the pattern of such conduct, if any, and the context in which the incident(s) occurred.
- E. Individuals who believe they have been unjustly charged with sexual or other unlawful harassment will be afforded every opportunity to offer and present information in their defense.
- F. Anyone who participates in this procedure may do so without fear of retaliation. Retaliation against anyone, because he or she has filed a harassment complaint, is illegal and grounds for disciplinary action.
- G. An individual who is found to have violated this policy will be subject to the Town's disciplinary procedures and, if found guilty of such harassment, subject to a penalty up to and including termination.

## **§ 68-5. Applicability; avoiding or reporting prohibited conduct; false complaints.**

- A. This policy applies to all employees and Town officials, whether related to conduct engaged in by an employee or someone not directly connected to the Town (e.g., outside vendors, consultants).
- B. All employees and Town officials will be held responsible and accountable for avoiding or reporting prohibited conduct.
- C. Anyone who knowingly makes a false complaint of sexual or other unlawful harassment (as opposed to a complaint which, even if erroneous, is made in good faith) shall be subject to appropriate disciplinary action.